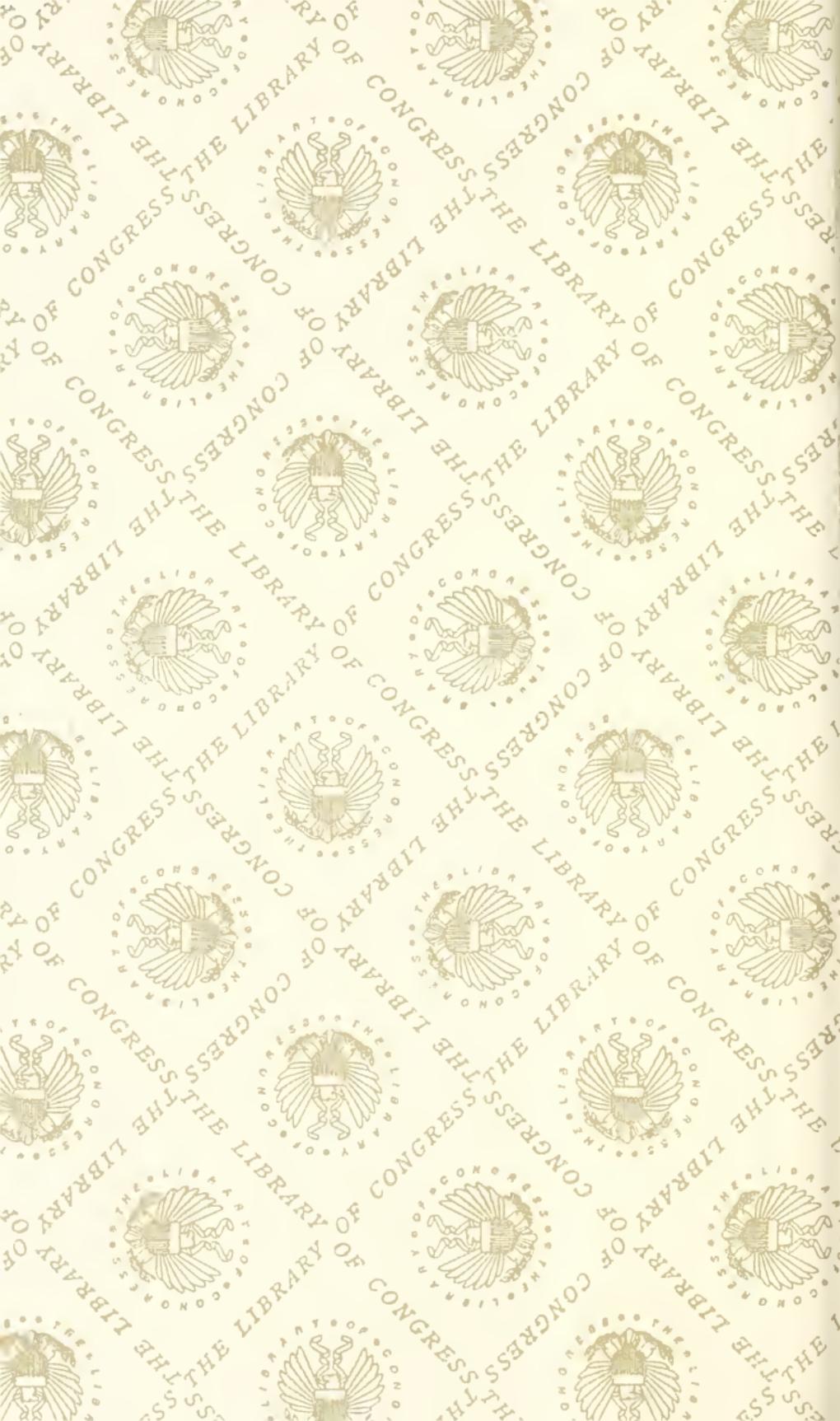


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THE
SPEECH
OF
HIS EXCELLENCY GOVERNOR STRONG,

DELIVERED BEFORE THE

LEGISLATURE OF MASSACHUSETTS,

OCTOBER 16, 1812.

WITH

THE DOCUMENTS,

WHICH ACCOMPANIED THE SAME.

PRINTED BY ORDER OF THE HOUSE OF REPRESENTATIVES.

BOSTON:

PRINTED BY RUSSELL AND CUTLER.

1812.

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SPEECH.

*Gentlemen of the Senate—and
Gentlemen of the House of Representatives,*

THE period again approaches when Electors of a President and Vice-President of the United States are to be appointed, and you have now assembled that you may execute the important trust, of directing the manner of their appointment on the part of this State. I hope that nothing will interfere to prevent an impartial discharge of this publick duty. The language of the Constitution on this subject is imperative. "Each State shall appoint, in such manner as the Legislature thereof may direct, a number of Electors." This form of expression was necessary; for it is obvious, that if the States should neglect to appoint Electors, the National Government would be at an end. In addition to this, the Constitution has required, that the members of the State Legislatures, and all executive officers shall be bound by oath or affirmation to support the Constitution. We have taken this oath; and have also sworn impartially to perform all the duties incumbent on us as members of the State Government. Should this duty be neglected, the people of this state would, on this important occasion, lose their political consequence, and be deprived of the rights of citizens.

By a letter of the 12th of last June, the Secretary of War requested me, by direction of the President, to order into the service of the United States, on the requisition of Major-General DEARBORN, such part of the quota of militia from this State, detached conform-

ably to the act of the 10th of April last, as he might deem necessary for the defence of the sea-coast. On the 22d of June I received a letter from Gen. DEARBORN, informing me that war was declared against G. Britain, and requesting me to order forty-one companies of the detached militia into the service of the U. States for the defence of the ports and harbours in this State, and the harbour of Newport in the State of R. Island; and stating that the companies were intended for the following ports and harbours, in the following proportions:—For Passamaquoddy five companies, for Machias one company, for Castine three companies, for Damariscotta and Wiscasset two companies, for Kennebunk one company, for Portland five companies, for Marblehead, Salem, Cape-Ann and Newburyport, four companies, for Boston twelve companies, and for Rhode-Island eight companies. I also received from Gen. DEARBORN two other letters of June 26 and June 29, on the same subject.

The Constitution of the U. S. declares that, "Congress may provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions," and the act of Congress of April 10th authorizing a detachment of 100,000 of the militia, empowers the President to "call into actual service any part, or the whole of said detachment in all the exigencies provided by the Constitution." From these clauses in the Constitution and law of April 10th, the President derives his authority to call the militia of the States into actual service; and except in the exigencies above mentioned he can have no authority by the Constitution to do it. But there was no suggestion, either in the letter from the War Department, above referred to, or in those from Gen. DEARBORN, that this State or Rhode-Island was invaded, or in imminent danger of invasion; or that either of the exigencies recognized by the Constitution and law of the United States existed. If such declaration could have been made with truth, it would undoubtedly have been made.

Gen. DEARBORN plainly supposed, that in consequence of the act declaring war, he was authorized by virtue of the power given him by the President, to require any part or the whole of our detached militia to be called out and marched to such places in this and the other States as he might think proper. If this construction of the Constitution is correct, the President and Congress will be able at any time, by declaring war, to call the whole militia of the U. S. into actual service, and march them to such places as they may think fit, and retain them in service as long as the war shall continue. It is declared indeed by the aforesaid act of April 10th, that the said detachment shall not be compelled to serve a "longer time than six months after they arrive at the place of rendezvous." But if the mere act of declaring war gives a right to the National Government to call the militia into service and detain them six months, it must give a right to detain them six years, if the war continues so long; and the National Government has the same authority to call out the whole, as a part of the militia.

Heretofore it has been understood, that the power of the President and Congress to call the militia into service, was to be exercised only in cases of sudden emergency, and not for the purpose of forming them into a standing army or of carrying on offensive war. But according to the above construction, the right to employ the militia is made to depend, not upon contingencies which the National Government might be unable to foresee or provide against, but upon its own act—upon the existence of a state of war, which the Government has a right to declare as often, and continue so long, as it may think proper.

Although many of the most important attributes of sovereignty are given by the Constitution to the Government of the U. S. yet there are some which still belong to the State Governments ; of these, one of the most essential is the entire control of the militia, except in the exigencies above mentioned ; this has not been delegated to the United States—it is therefore reserved to the States respectively ; and whenever it shall be

taken from them, and a consolidation of the military force of the States shall be effected, the security of the State Governments will be lost, and they will wholly depend for their existence upon the moderation and forbearance of the National Government.

I have been fully disposed to comply with the requirements of the Constitution of the United States and the laws made in pursuance of it, and sincerely regretted that any request should be made by an Officer of the National Government to which I could not constitutionally conform. But it appeared to me that the requisition aforesaid was of that character ; and I was under the same obligation to maintain the rights of the State, as to support the Constitution of the U. S. If the demand was not warranted by the Constitution, I should have violated my duty in a most important point, if I had attemped to enforce it, and had thereby assisted in withdrawing the militia from the rightful authority of the State. Besides, if the measure was not required by the Constitution, it would have been oppressive, as the militia must have been called from their occupations to places remote from their homes, and detained in the service during the busy season of the year. I, therefore, on the third day of July, issued a general order ; and on the same day wrote to Gen. DEARBORN, that I had directed the Adjutant-General to furnish him with a copy of it ; and that after mature reflection I had endeavoured, in that order, to pursue the course which my duty, in relation to the request contained in his letter of June 22d, required of me.

Afterwards, by a letter of July 15th, Gen. DEARBORN informed me, that having received orders to leave the sea coast, where he was ordered for the purpose of taking the necessary measures for placing the towns and garrisons in a state of defence against the invasion or attack of the enemy, and to repair to Albany, it became his duty to request me to order out such part of the detached militia as *the present state of war required*, the number being stated in his letter of the 22d June ; and that as other objects would require the ser-

vice of a great part of the regular troops, it would become his duty to order them from the seaboard. This letter I had no opportunity of answering before Gen. DEARBORN left the State. But I presumed if this State was in danger of invasion, that the regular troops would not be ordered to Albany, and if they were so ordered, that the militia were not liable to be called into service and stationed in the forts of the U. States to do garrison duty, when no danger of invasion appeared.

On the 27th of July, I received a letter from the Secretary of War, of the 21st of that month, stating that orders had been given to Gen. DEARBORN to move the regular troops to the northern frontier, leaving a sufficient number to man the guns in the garrisons on the seaboard, and renewing the requisition aforesaid. In this letter he says, "The danger of invasion which existed at the time of issuing the order of the President, increases." This expression was peculiarly guarded, as the order of the President was issued before war was declared. However, as this and the last letter of Gen. DEARBORN, seemed to imply that there was some danger of invasion, and as the measures to be taken on my part were of importance, I thought it expedient to convene the Council, and request their advice on the subject of the foregoing letters. The Council advised, that they were unable from a view of the Constitution of the United States, and the documents aforesaid, to perceive that any exigency existed which could render it adviseable to comply with the said requisition. But as upon important questions of law, and upon solemn occasions, the Governor and Council have authority to require the opinion of the Justices of the Supreme Judicial Court, that it was adviseable to request the opinion of the Supreme Court upon the following questions, viz.

1st. Whether the Commanders in Chief of the militia of the several States, have a right to determine whether any of the exigencies contemplated by the Constitution of the United States exist, so as to require them

to place the militia, or any part of it, in the service of the United States, at the request of the President, to be commanded by him pursuant to acts of Congress?

2d. Whether, when either of the exigencies exist, authorizing the employing the militia in the service of the United States, the militia thus employed, can be lawfully commanded by any officer but of the militia, except by the President of the United States?

After the above request was made to the Supreme Court, a person deputed by the inhabitants of Eastport and Robinstown, on our eastern boundary, applied to me, representing that there were many lawless people on the borders, from whom they had serious apprehensions of an attack, and requesting that a number of the militia might be stationed in those towns. The Council advised that three companies of the detached militia should be called into the service of the United States for their protection. On the 6th August I issued an order for that purpose, and directed that two of the companies should be stationed at Eastport, and one company at Robinstown, until the President should otherwise direct: and the same day, by a letter to the Secretary of War, informed him of the transactions aforesaid—and having received the opinion of the Judges on the above questions, inclosed to him their answer. A copy of that opinion and the letters and papers above referred to, will be laid before you by the Secretary.

Soon after the declaration of war, several towns on the sea coast applied to the Governor and Council for arms and ammunition, as many persons who were exempt from military duty, were destitute of the necessary means of defence. Agreeably to the advice of the Council, they were, in some instances, furnished with those articles. By inspecting the returns of the Quarter-Master-General, you will be convinced of the necessity of obtaining a further supply of small arms and military stores, and the more so, as our defence on the seaboard seems almost wholly to be confided to the militia. We have in this state several hundred miles of sea coast, a number of islands near the coast are inhab-

sted by our citizens, and more than one hundred of our towns may be approached by the enemy's ships. It is obvious therefore that only a maritime defence can afford them full security. Still, however, we should employ such means as we possess for their protection, and to this end, it will be necessary that the whole militia should be armed and equipped in the best possible manner, and ready to march at the shortest notice, and in case of invasion that arms should be in readiness for every man who is able to bear them. In this way it is probable that our defensive force, and the general security of the seaboard will be as great, as if portions of the militia were drawn from every part of the State, and stationed in a few of the large towns on the coast.

While the War, in which we are unhappily involved, continues, it is to be carried on only in the name and by direction of the public. The people cannot act of themselves except for the defence of their possessions and territories. Without the commission or particular order of the Government, they have no right to commit hostilities or undertake any offensive expedition. In modern warfare the troops alone carry on the war, while the rest of the people peaceably follow their callings; and if they refrain from hostilities, have generally but little to fear from the enemy's arms.

For many years, and until within a late period, the nations of Europe have made war with moderation and generosity, and in a manner which proved they had not forgotten that their enemies were men, and might afterwards become friends. Indeed war is so dreadful in its effects, and so destructive to human happiness, that the law of nature allows of it only in the utmost extremity; and requires, that when it is resorted to, the persons engaged in it shall endeavor to mitigate its horrors as far as their safety will permit, by the exercise of justice and humanity. These principles of the law of nature are confirmed by the precepts of the Christian religion.

Whatever sentiments may prevail among the people of this State concerning the justice or expediency of the

present War, I hope and trust that they will perform the duties enjoined on them by our Constitutions and Laws, and that they will do nothing to obstruct the Government in the constitutional measures they may think proper to adopt. If those measures are thought to be unjustifiable or particularly injurious to this part of the Union, let us cherish a confidence in the wisdom and the justice of the other States, and wait with patience for the remedy provided by the Constitution. In the mean time, let us regard with abhorrence those violent personal outrages, which are fatal to the peace and disgraceful to the character of any people; let us be watchful and determined to prevent tumults and disorders of every kind, by which our internal tranquillity would be endangered, and be as willing to indulge in others the right of expressing their opinions of publick measures, as we are to exercise that right ourselves.

I shall readily co-operate with you, Gentlemen, in any measures that may be thought conducive to the defence and tranquillity of the State, and the preservation and security of the Union; and may the GOD of our Fathers protect us in this calamitous period, and guide us in the way of duty and asfety.

CALEB STRONG.

October 14, 1812.

DOCUMENTS.

WAR DEPARTMENT, }
June 12, 1812. }

SIR,

I am directed by the President to request your Excellency to order into the service of the United States, on the requisition of Major General Dearborn, such part of the quota of militia from the state of Massachusetts, detached conformably to the act of April 10, 1812, as he may deem necessary for the defence of the sea coast.

With great respect,

I have the honour to be

Your Excellency's

Obedient servant,

W. EUSTIS.

His Excellency the Governor of the }
State of Massachusetts. }

HEAD QUARTERS BOSTON, }
June 22, 1812. }

To His Excellency CALEB STRONG.

SIR,

I have received instructions from the President of the United States, to call on your Excellency for such part of the quota of the militia of Massachusetts, which was detached conformably to the act of Congress of April 10, 1812, as I may deem necessary for the defence of the sea-coast; and I now have the honour of requesting your Excellency to order

fourteen companies of Artillery, and twenty-seven companies of Infantry into the service of the United States, for the defence of the posts and harbours in this State, and the harbour of Newport in the State of Rhode-Island. The companies are intended for the following posts and harbours in the following proportions. For Passamaquoddy one company of Artillery and four companies of Infantry, to be commanded by a Major. For Machias one company of Artillery. For Castine one company of Artillery and two companies of Infantry, to be commanded by a Major. For Damariscotta and Wiscasset two companies of Artillery. For Kennebunk one company of Artillery. For Portland two companies of Artillery and three companies of Infantry, to be commanded by a Major. For Marblehead, Salem, Cape-Ann and Newburyport, two companies of Artillery and two companies of Infantry. For Boston four companies of Artillery and eight companies of Infantry, with a Lieut. Col. and one Major. For the defence of Rhode-Island eight companies of Infantry, with a Lieut. Col. and one Major.

Having received official information that War has been declared by Congress against Great Britain, your Excellency will perceive the expediency of giving facility to such measures of defence as the crisis demands, and as the defence of the sea-coast of New England is by the General Government confided to my direction, I shall with confidence rely on all the aid and support that the respective Governors of the New England States can afford; and in a special manner on that of the Commander in Chief of the important State of Massachusetts. And I shall at all times receive with the greatest pleasure and readiness any advice or information that your Excellency may be pleased to communicate.

With respectful consideration,

I am, Sir, your obedient servant,

H. DEARBORN.

HEAD QUARTERS BOSTON, }
June 26, 1812. }

To His Excellency CALEB STRONG.

SIR,

Not having received any notice from your Excellency, or from the Adjutant General, of the measures which have been taken, for calling into the service of the United States, for the defence of the sea coast, the companies of militia proposed in the note I had the honour of addressing to your Excellency on the 22d instant, a sense of duty compels me to solicit such information on the subject, as the urgency of the crisis demands; and I am persuaded, that no unnecessary delay will disappoint any anxious desire for as early an answer as circumstances will admit of.

With great respect,

I have the honour to be your

Excellency's most obedient servant,

H. DEARBORN, Maj. Gen.

Boston, June 26, 1812.

Major General DEARBORN.

SIR,

I have received your letter of this day, in which you request information of the measures which have been taken for calling the militia into the service of the United States. I find that Governor Gerry on the 25th of April last, ordered that ten thousand men should be detached from the militia of this state. But I am informed by the Adjutant General, that the returns of those detachments have not come to hand, except in a very few instances.

I am, Sir, with great respect,

Your most obedient servant,

C. STRONG.

HEAD QUARTERS BOSTON,
June 29, 1812.

His Excellency Governor STRONG.

SIR,

I have been honoured with your Excellency's note of the 26th instant. Returns having been made of the detachments of militia from ten brigades and principally from those on the sea board, I take the liberty of suggesting the expediency of ordering out the full proportion of companies from those brigades, and of giving the necessary orders to others whose returns have not yet been received. May it not be presumed that although the returns have not all been forwarded, the general officers would, on receiving your Excellency's orders, turn out their respective quotas.

I am, Sir, your humble servant,
H. DEARBORN, Maj. Gen.

Boston, July 3, 1812.

Major General DEARBORN.

SIR,

I have issued a General Order of this date, with a copy of which I have directed the Adjutant General to furnish you; in which, after mature reflection, I have endeavoured to pursue the course that my duty, in relation to the request contained in your letter of June 22d, requires of me.

I am, Sir, with great respect,
your most obedient and humble servant,
C. STRONG.

COMMONWEALTH OF MASSACHUSETTS.

GENERAL ORDERS.

HEAD QUARTERS BOSTON, }
July 3, 1812. }

War having been declared by the government of the United States against Great Britain and Ireland, and the dependencies thereof, the Commander in Chief calls upon the militia of Massachusetts duly to notice the solemn and interesting crisis, and exhorts them to meet the occasion with constancy and firmness.

When war is commenced, no human foresight can discern the time of its termination, or the course of events that must follow in its train ;—but the path of duty is the path of safety, providence seldom abandons to ruin those, who, to a just reliance on the superintending influence of Heaven, add their own vigilant and strenuous exertions to preserve themselves.—At the present moment, therefore, the Commander in Chief earnestly recommends to the officers of every grade, a close and persevering attention to the duties resulting from their several stations—particularly that they acquire and maintain a perfect knowledge of the condition of their respective commands, and see, as far as is in their power, that their men are duly armed and equipped, that the time allotted to trainings be devoted to the instruction of non-commissioned officers and soldiers in the exercise of arms, and in the practice of evolution as prescribed in the established regulations ; and that the provisions and intentions of the laws, being in every respect fulfilled, they may be ready with alacrity and effect to defend their country, their constitutional rights, and those liberties which are not only our birthrights, but which, at the expense of so much blood and treasure, were purchased in the late revolution.

From the docility, from the good sense and patriotism of the non-commissioned officers and soldiers, the

Commander in Chief is led to expect a patient submission to the instructions of their officers, prompt obedience to orders, and the practice of all those military and masculine virtues which adorn the soldier and exalt the man.

To all the **Militia**, both officers and soldiers, the **Commander in Chief** would superadd an earnest exhortation, as they are citizens as well as soldiers, to cultivate a spirit of candour, of friendship, and mutual forbearance, and an ardent love of country, that shall elevate them above all sinister views, and eventually secure to them and their children, the blessings of peace, of liberty, and good government.

The **Commander in Chief** requires, that particular attention be paid to the town magazines—that they are fully provided with the ammunition, military stores and utensils which the law directs ; and the **Brigade Quarter Masters** are required to perform their duty with promptitude and exactness.

In such divisions as have not completed the detachment of ten thousand men called for by the General Orders of the 25th day of April last, the Major Generals or commanding officers of those divisions are enjoined to attend to that service without delay, and to make and complete the detachments from their respective corps, of their several quotas of the said ten thousand men, and to make return of the same as speedily as may be to the Adjutant General—the said Generals and other officers will take care that the **Militia** so detached, are duly provided with the efficient arms and accoutrements necessary for actual service. The **Militia** detached by the Orders above alluded to, after they are formed conformably to said Orders, will hold themselves in readiness to march on the shortest notice, pursuant to the orders to be given by the **Commander in Chief**, unless in case of actual invasion, or imminent danger thereof, in which case, without waiting for such orders, they will march, without delay, to the defence of any part or parts of

this Commonwealth that shall be so invaded, or in imminent danger of invasion—and when in the actual service of the United States will be under the command of the President, agreeably to the constitution of the United States.

And whereas the quota of ten thousand Militia, required as aforesaid, being to be raised from the several divisions and corps throughout the Commonwealth, cannot be assembled in time to repel a sudden invasion; and to embody them previously, and keep them in constant service, would be extremely burdensome, and even if assembled would not be adequate to the defence of the numerous points on a coast of several hundred miles in extent; the Commander in Chief further orders and directs, that the Generals and other officers of the whole Militia of the Commonwealth, bearing in mind the possibility of a sudden invasion, hold themselves, and the corps of Militia under their respective commands, in constant readiness to assemble and march to the defence of any part or parts of the Commonwealth, pursuant to the orders to be given by him; but without waiting for such orders, in case of actual invasion, or such imminent danger thereof as will not admit of delay.

By the General Orders above mentioned of the 25th of April last, three Major Generals and six Brigadier Generals were assigned to command in that detachment, without being regularly detailed from the Roster. The Commander in Chief therefore orders, that the following General Officers, being detailed from the Roster as the law directs, be appointed to command in the said detachment, in lieu of the General Officers named in the General Orders aforesaid, viz.

Western Division.

Major General EBENEZER MATTOON,
Brigadier General CALEB BURBANK,
Brigadier General ISAAC MALTBY.

Eastern Division.

**Major General HENRY SEWALL,
Brigadier General JOHN BLAKE,
Brigadier General DAVID PAYSON.**

Southern Division.

**Major General JOSEPH B. VARNUM,
Brigadier General EBENEZER LOTHROP,
Brigadier General WILLIAM HILDRETH.**

By order of the Commander in Chief.

WILLIAM DONNISON,
Adjutant General.

HEAD QUARTERS BOSTON, }
July 15, 1812. }

His Excellency CALEB STRONG.

SIR,

Having received Orders to leave the sea-coast, where I was ordered for the purpose of taking the necessary measures for placing the towns and garrisons in a state of defence against the invasion or attack of the enemy, and to repair to Albany; it becomes my duty again to request your Excellency to order out such part of this State's quota of the detached militia as the present state of war requires. The numbers I had the honour to state to your Excellency in my letter of the 22d ult. As the other objects will require the service of a great part of the regular troops, it will become my duty to order them from the sea-board, and of course I must leave some part of the coast with less protection against those depredating parties of the enemy, that may attempt invasion for the mere purpose of plunder, than prudence would have justified, if a suitable number of the militia should not be ordered out in conformity with the views and intentions of the President of the United States as heretofore expressed. If your Excellency shall consider it expedient to have the militia turned

out for the proposed purposes, I will with pleasure afford all the aid in my power for effecting the intended objects, consistently with the orders I have received. As early an answer as your Excellency can make convenient, will be very desirable.

I have the honour to be, very respectfully,

Your Excellency's most obedient servant,

H. DEARBORN, *Maj. Gen.*

— — —
WAR DEPARTMENT, }
July 21, 1812. }
 }

SIR,

By information received from Major General Dearborn, it appears that the detachments from the militia of Massachusetts for the defence of the maritime frontier, required by him under the authority of the President, by virtue of the act of the 10th of April, 1812, have not been marched to the several stations assigned them.

Inasmuch as longer delay may be followed with distress to a certain portion of our fellow citizens, and with injurious consequences to our country, I am commanded by the President to inform your Excellency that this arrangement of the militia was preparatory to the march of the regular troops to the northern frontier. The exigencies of the service have required, and orders have accordingly been given to Major General Dearborn, to move the regular troops to that frontier, leaving a sufficient number to man the guns in the garrisons on the sea-board. The execution of this order, increases, as your Excellency cannot fail to observe the necessity of hastening the detached militia to their several posts as assigned by General Dearborn; in which case they will of course be considered in the actual service and pay of the United States.

The danger of invasion which existed at the time of issuing the order of the President, increases: and

I am specially directed by the President to urge this consideration to your Excellency, as requiring the necessary order to be given for the immediate march of the several detachments specified by General Dearborn, to their respective posts.

I have the honour to be, very respectfully,

Sir, your Excellency's obedient servant,

WILLIAM EUSTIS.

*His Excellency CALEB STRONG,
Governor of Massachusetts.*

Boston, August 1, 1812.

The Honourable the Justices of the Supreme Judicial Court of the Commonwealth of Massachusetts.

GENTLEMEN,

Having laid before the Council of this State a letter from the Secretary of War of the 12th of June last, and letters dated June 22, and July 15, 1812, which I received from Maj. Gen. Dearborn, and also a letter which I have received from the Secretary of War of July 21, 1812, requesting their advice what measures ought to be adopted in consequence of the requisition expressed in the said letters.

The Council thereupon advised that, as upon important questions of law and upon solemn occasions, the Governor and Council have authority by the constitution to require the opinions of the Justices of the Supreme Judicial Courts; it is advisable to request the opinion of the Justices of the Supreme Judicial Court on the following questions, to wit:—

1. Whether the Commanders in Chief of the Militia of the several States have a right to determine whether any of the exigencies contemplated by the constitution of the United States exist, so as to require them to place the Militia, or any part of it, in the service of the United States, at the request of the President, to be commanded by him pursuant to acts of Congress.

2. Whether, when either of the exigencies exist authorizing the employing of the Militia in the service of the United States, the Militia thus employed can be lawfully commanded by any officers but of the Militia, except by the President of the United States.

In conformity with the foregoing advice of the Council, I request you, Gentlemen, to state to me your opinions on the questions above mentioned, as soon as conveniently may be. The Secretary will deliver you herewith the letters above mentioned.

I am, Gentlemen, with great respect,

Your most obedient servant.

CALEB STRONG.

To his Excellency the GOVERNOR and the Honourable COUNCIL of the Commonwealth of Massachusetts.

The undersigned, Justices of the Supreme Judicial Court, have considered the several questions proposed by your Excellency and Honours for their opinion.

By the constitution of this State, the authority of commanding the Militia of the Commonwealth is vested exclusively in the Governor, who has all the powers incident to the office of Commander in Chief, and is to exercise them personally or by subordinate officers under his command, agreeably to the rules and regulations of the constitution and the laws of the land.

While the Governor of the Commonwealth remained in the exercise of these powers, the federal constitution was ratified, by which was vested in the Congress a power to provide for the calling forth the Militia, to execute the laws of the Union, suppress insurrections and repel invasions; and to provide for governing such part of them as may be employed in the service of the United States, reserving to the

States respectively the appointment of the officers. The federal constitution further provides, that the President shall be commander in chief of the army of the United States and of the Militia of the several States, when called into the actual service of the United States.

On the construction of the federal and state constitution must depend the answers to the several questions proposed. As the Militia of the several States may be employed in the service of the United States for the three specific purposes of executing the laws of the Union, of suppressing insurrections and repelling invasions, the opinion of the Judges is requested, whether the Commanders in Chief, of the Militia of the several States have a right to determine whether any of the exigencies aforesaid exist, so as to require them to place the Militia, or any part of it, in the service of the United States, at the request of the President, to be commanded by him pursuant to acts of Congress.

It is the opinion of the undersigned, that this right is vested in the Commander in Chief of the Militia of the several States.

The federal constitution provides, that when either of these exigencies exist, the Militia may be employed, pursuant to some act of Congress, in the service of the United States; but no power is given either to the President or to the Congress to determine that either of the said exigencies do in fact exist, as this power is not delegated to the United States by the federal constitution, nor prohibited by it to the States, it is reserved to the States respectively; and from the nature of the power it must be exercised by those with whom the States have respectively entrusted the chief command of the Militia.

It is the duty of these commanders to execute this important trust agreeably to the laws of their several States respectively, without reference to the laws or officers of the United States, in all cases, except those specially provided in the federal consti-

tution. They must therefore determine when either of the special cases exist obliging them to relinquish the execution of this trust, and to render themselves and the Militia subject to the command of the President. A different construction, giving to Congress the right to determine when these special cases exist, authorizing them to call forth the whole of the Militia, and taking them from the Commanders in Chief of the several States and subjecting them to the command of the President, would place all the Militia in effect at the will of the Congress and produce a military consolidation of the States, without any constitutional remedy against the intentions of the people when ratifying the federal constitution. Indeed since the passing of the act of Congress of February 28, 1795, c. 101, vesting in the President the power of calling forth the Militia when the exigencies mentioned in the constitution shall exist, if the President has the power of determining when those exigencies exist, the Militia of the several States is in fact at his command and subject to his controul.

No inconveniences can reasonably be presumed to result from the construction which vests in the Commanders in Chief of the Militia in the several States the right of determining when the exigencies exist obliging them to place the Militia in the service of the United States. These exigencies are of such a nature, that the existence of them can be easily ascertained by or made known to the Commanders in Chief of the Militia ; and when ascertained, the public interest will induce a prompt obedience to the acts of Congress.

Another question proposed to the Consideration of the Judges is, whether, when either of the exigencies exist authorizing the employing of the Militia in the service of the United States, the Militia thus employed can be lawfully commanded by any officer but of the Militia, except by the President of the United States.

The federal constitution declares that the President shall be the Commander in Chief of the army of the United States. He may undoubtedly exercise this command by officers of the army of the United States by him commissioned according to law. The President is also declared to be the Commander in Chief of the Militia of the several States, when called into the actual service of the United States. The officers of the Militia are to be appointed by the States; and the President may exercise his command of the Militia by the officers of the Militia duly appointed. But we know of no constitutional provision authorizing any officer of the army of the United States to command the Militia, or authorizing any officer of the Militia to command the army of the United States. The Congress may provide laws for the government of the Militia when in actual service; but to extend this power to the placing them under the command of an officer, not of the Militia, except the President, would render nugatory the provision that the Militia are to have officers appointed by the States.

The union of the Militia in the actual service of the United States with the troops of the United States, so as to form one army, seems to be a case not provided for or contemplated in the constitution: It is therefore not within our department to determine on whom the command would devolve on such an emergency, in the absence of the President. Whether one officer either of the Militia or of the army of the United States to be settled according to military rank should command the whole; whether the corps must be commanded by their respective officers, acting in concert as allied forces; or what other expedient should be adopted; are questions to be answered by others.

The undersigned regret, that the distance of the other Justices of the Supreme Judicial renders it impracticable to obtain their opinions seasonably upon the questions submitted.

(Signed.)

**THEOP. PARSONS.
SAMUEL SEWALL,
ISAAC PARKER**

Boston, August 5, 1812.

The Honourable WILLIAM EUSTIS, Secretary at War.

SIR,

I received your letter of the 21st of July, when at Northampton, and the next day came to Boston. The people of this State appear to be under no apprehension of an invasion—several towns indeed on the sea coast, soon after the declaration of war, applied to the Governor and Council for arms and ammunition, similar to the articles of that kind which had been delivered to them by the State in the course of the last war, and in some instances they were supplied accordingly. But they expressed no desire that any part of the militia should be called out for their defence, and, in some cases, we were assured such a measure would be disagreeable to them.

You observe in your last letter, that the danger of invasion which existed at the time of issuing the order of the President, increases. It would be difficult to infer from this expression, that in your opinion, that danger is now very considerable, as the President's order must have been issued before war was declared, your former letter being dated the 12th of June, and General Dearborn's, who was then at Boston, on the 22d of that month;—besides, it can hardly be supposed that, if this State had been in great danger of invasion, the troops would have been called from hence, to carry on offensive operations in a distant Province—however, as it was understood that the Governor of Nova Scotia had by Proclamation forbid any incursions or depredations upon our territories, and as an opinion generally prevailed, that the Governor has no authority to call the militia into actual service, unless one of the exigencies contemplated by the constitution exists, I thought it expedient to call the Council together, and having laid before them your letters, and those which I had received from General Dearborn, I requested their advice on the subject of them.

The Council advised "that they are unable, from a view of the constitution of the United States and the letters aforesaid, to perceive that any exigency exists which can render it adviseable to comply with the said requisition. But as upon important questions of law and upon solemn occasions the Governor and Council have authority to require the opinion of the Justices of the Supreme Judicial Court, it is adviseable to request the opinion of the Supreme Court upon the following questions, viz.

1. Whether the Commanders in Chief of the militia of the several States have a right to determine whether any of the exigencies contemplated by the constitution of the United States exist, so as to require them to place the militia, or any part of it, in the service of the United States, at the request of the President, to be commanded by him pursuant to acts of Congress ?
2. Whether, when either of the exigencies exist authorising the employing of the militia in the service of the U. States, the militia thus employed can be lawfully commanded by any officer but of the militia, except by the President of the United States?"
I inclose a copy of the answers given by the Judges to these questions.

Since the Council were called, a person deputed by the towns of Eastport and Robbinstown, on our eastern boundary at Passamaquoddy, applied to me; representing that they had no apprehensions of invasion by an authorized British force, but that there were many lawless people on the borders, from whom they were in danger of predatory incursions, and requesting that they might be furnished with some arms and ammunition, and that three companies of militia might be called out for their protection. The Council advised that they should be supplied with such arms and ammunition as were necessary for their present defence, which has been ordered. They also advised me to call into the service of the United

States three companies of the detached militia for the purposes above mentioned. I have this day issued an order for calling out three companies of the detached militia to be marched forthwith to Passamaquoddy and to be commanded by a Major: two of the companies will be stationed at Eastport, and one company at Robbinstown, until the President shall otherwise direct.

I have no inclination officially to interfere in the measures of the General Goverment, but if the President was fully acquainted with the situation of this State, I think he would have no wish to call our militia into service in the manner proposed by General Dearborn.

It is well known that the enemy will find it difficult to spare troops for the defence of their own territory, even predatory incursions are not likely to take place in this State, for at every point, except Passamaquoddy, which can present an object to those incursions, the people are too numerous to be attacked by such parties as generally engage in expeditions of that kind.

General Dearborn proposed that the detached militia should be stationed at only a few of the ports and places on the coast—from the rest a part of the militia were to be called away; this circumstance would increase their danger—it would invite the aggressions of the enemy and diminish their power of resistance.

The whole coast of Cape Cod is exposed as much as any part of this State to depredations—part of the militia must, according to the detaching orders, be marched from their homes, and yet no place in the old Colony of Plymouth is assigned to be the rendezvous of any of the detached militia.

Every harbour or port within the State has a compact settlement, and generally the country around the harbours is populous. The places contemplated in General Dearborn's specification as the rendezvous of the

detached militia, excepting one or two instances, contain more of the militia than the portion of the detached militia assigned to them. The militia are well organized, and would undoubtedly prefer to defend their fire-sides in company with their friends, under their own officers, rather than to be marched to some distant place, while strangers might be introduced to take their places at home.

In Boston the militia is well disciplined and would be mustered in an hour upon any signal of an approaching enemy, and in six hours the neighbouring towns could pour in a greater force than any invading enemy will bring against it.

The same remark applies to Salem, Marblehead and Newburyport, places whose harbours render an invasion next to impossible ; in all of them there are, in addition to the common militia, independent corps of Infantry and Artillery well disciplined and equipped, and ready, both in disposition and means, to repair to any place where invasion may be threatened, and able to repel it, except it should be made by a fleet of heavy ships, against which nothing perhaps but strong fortifications, garrisoned by regular troops would prove any defence until the enemy should land, when the entire militia would be prepared to meet them.

Kennebunk is unassailable by any thing but boats, which the numerous armed population is competent to resist ;—Portland has a militia and independent corps sufficiently numerous for its defence, and the same is the case with Wiscasset and Castine.

Against predatory incursions the militia of each place would be able to defend their property, and in a very short time they would be aided, if necessary, by the militia of the surrounding country ; in case of a more serious invasion, whole Brigades or Divisions could be collected seasonably for defence. Indeed, considering the state of the militia in this Commonwealth, I think there can be no doubt, that detaching

a part of it and distributing it into small portions will tend to impair the defensive power.

I have thus freely expressed to you my own sentiments, and so far as I have heard, they are the sentiments of the best informed men. I am fully disposed to afford all the aid to the measures of the National Government which the constitution requires of me; but I presume it will not be expected or desired that I shall fail in the duty which I owe to the people of this State, who have confided their interests to my care.

I am, Sir, with respect,
your most obedient, and
humble servant,

C. STRONG.

COMMONWEALTH OF MASSACHUSETTS.

GENERAL ORDERS.

HEAD QUARTERS, BOSTON, }
August 5th, 1812. }

By the General Order of the 3d of July last, Major General Henry Sewall is appointed to command the Eastern Division of the Militia, which was detached under the Order of the 25th of April last, consisting of all the detached Militia in the District of Maine.

The Commander in Chief having been requested by Major General Dearborn, by order of the President of the United States, to direct a part of the Militia, detached under the said Order of the 25th of April, to march to Passamaquoddy, for the defence of the posts and harbours on the eastern border of this Commonwealth; and considering that that part of the State is in a peculiar manner in danger of invasion, and that disorderly persons may attempt to disturb and annoy the peaceable inhabitants in that neighbourhood, and endanger their lives and property; has thought fit to order, and doth hereby order, that three full compa-

nies of Infantry, of the Eastern detached Division of Militia, be designated by Major General Sewall; and after being completely armed and equipped, ordered to march as soon as possible, to Eastport, in the District of Maine, which is appointed the place of rendezvous. The said three companies will form a Battalion, under the command of a detached Major, to be designated Major General Sewall, who will also designate an Adjutant and Quarter Master, and order the whole to march without delay to the place of Rendezvous. The Major commanding the Battalion will see that provision is made for the subsistence of his troops, from the places from whence the companies march, until their arrival at the place of rendezvous, in the manner prescribed by law, and for the transportation of their baggage. Major General Sewall, in designating the companies to march, will, as far as may be, take them from the nearest counties and districts, and from places the least exposed to the enemy.

The Major Generals and other officers of the local Divisions of the militia, from which any part of the said Battalion may be drawn, will afford their aid in completing the Companies, and will see that the men are armed and equipped as the law directs.

The Commander in Chief expects that this Order will be obeyed by his fellow citizens of the draughted Militia, with promptitude, and when marching to the place of their destination, as well as afterwards, that they will preserve good order, and render due obedience to the commands of their officers. He would remind them that they are not only called forth to defend the frontier against any invasion of a foreign enemy, but to prevent the depredations of any lawless banditti who may be disposed to rob and plunder, whether they belong to our own territories or those of the enemy. Although war is declared between the U. States and G. Britain, it is to be carried on only by the order of Government. It is the duty of the inhabitants of the

towns and villages bordering on the British line, to endeavour to repel any invasion of our own Territories; but they have no right to make incursions into the Territories of the enemy. Lawless plunderers, either by sea or land, and as well in time of war as of peace, are pirates or robbers, and their depredations ought, as far as may be, to be prevented or punished; they only occasion distress and misery to the exposed inhabitants, and have no tendency to produce an equitable peace, which is the only justifiable object of war.

The Officers will be careful to inculcate upon their men the necessity of discipline, and a sacred regard to the rights of their fellow citizens. The soldiers of a free government should view with abhorrence, any attempt to assume power by the use of the sword, or to invade the rights of those, whom it is their duty to protect.

By Order of the Commander in Chief,
WILLIAM DONNISON,
Adjutant General.

Augusta, August 17, 1812.

SIR,

In execution of your Excellency's orders of the 5th instant, which came to hand on the evening of the 10th, after adding my own orders thereto, I despatched Major Dutch, one of my aids, on the 11th to Brig. Gen. Blake, to whom I also wrote, requesting him to afford all the assistance in his power, to promote the object in view. In designating the companies, I was induced to select that in the neighbourhood of Eastport for one, from the consideration that it would necessarily be exposed, whether put on duty or not; the other two from the interior neighbourhood of Penobscot river, because they were the nearest I could find which were not situated on the sea coast.

Major Dutch is now returned, with information that General Blake has entered into the spirit of the exi-

geney; that he has distributed the orders aforesaid, with his own annexed, to those companies in his neighbourhood, and that they will probably commence their march to-morrow. I have, moreover, written particular letters, per mail, to the Major, the Adjutant and the Quarter Master of the Battalion, and also to Colonel Shead, of Eastport, to whom I have enclosed a copy of the general and detachment order.

It being intimated to me from respectable sources, that Brigadier Gen. Brewer, of Robbinstown, is an active Officer, possessing considerable influence in that part of the Country, and that if he could be employed in the way of advice or assistance in the case, it might have a good effect, I have thought that it might not be improper, in view of all circumstances, to address him particularly to "afford his aid" in any instance which might facilitate the arrangements of the Supreme Executive, in the defence of that frontier; and unless your Excellency should think a letter from Head Quarters might have a better effect, I will attempt it shortly. I will suggest, with all deference, whether it will not be proper that the Major Commandant should be furnished with written instructions from the Commander in Chief.

I am, Sir,

With much esteem and respect,

Your Excellency's

Most obedient servant,

H. SEWALL.

His Excellency Governor STRONG, }
Commander in Chief. }

Eastern Detachment Orders, by Maj. Gen. SEWALL.

Augusta, August 11, 1812.

In obedience to the General Orders of the 5th inst. the three Companies of Infantry hereby designated to march to Eastport for the defence of that frontier, will be, the detached Company in the neighbourhood of

Eastport, under the command of Captain Thomas Vose, jun. of Robbins-town, the detached Company in the interior neighbourhood of Penobscot river, under the command of Captain Joshua Chamberlain,* of Orrington, and the detached Company in the same neighbourhood under the command of Captain Thomas George.* of Brewer, which will form a Battalion, to be commanded by Major Nathan Low, of Deer Isle ; Adjutant Moses Adams, of Elsworth, and Quarter Master Jeremiah Knowlton, are also hereby attached to the Battalion and directed to perform the duties of their respective offices therein. On receipt of these orders the troops composing the several Companies aforesaid, will be supplied with the necessary provisions &c. by the Selectmen of their respective towns, according to the directions prescribed in the militia law ; and being completely armed and equipped as the law directs will immediately march for Eastport, under the command of the said detached Captains, until they shall be joined by Major Low, from whom they will then take further orders. On the arrival of any of the said Companies at Eastport, Colonel Shead, of that place, is hereby requested to afford all the aid and advice which may be necessary for the judicious disposition or comfortable accommodation of the troops, especially until the Major Commandant shall arrive. A strict attention to the orders of the Commander in Chief is hereby enjoined on the Officers and men of this detachment relative to their conduct on the march, and at the place of destination.

Boston, August 21, 1812.

Hon. WILLIAM EUSTIS, Secretary at War.

SIR,

I mentioned in my letter to you of the 5th of August, that I had that day issued an order for calling out three companies of the detached Militia, to be

* These Captains names were inserted at Bangor by the advice of Gen. Blake.

marched immediately to Passamaquoddy, for the defense of that frontier, and to be commanded by a Major. I directed that two of the companies should be stationed at Eastport, and one company at Robbinstown, until the President should direct otherwise, unless, in the mean time, the Major with the advice of Brigadier General Brewer, who lives in Robbinstown, and to whom I wrote on the subject, should think a different disposition of the companies would be more advantageous.

I have this day received a letter from General Sewall, dated the 17th instant, in which he says, that he had designated the detached company in the neighbourhood of Eastport, under the command of Captain Thomas Vose, jun. of Robbinstown, the detached company in the interior neighbourhood of Penobscot River, under the command of Captain Joshua Chamberlain, of Orrington, and the detached company in the same neighbourhood, under the command of Captain Thomas George of Brewer, to form a Battalion, to be commanded by Major Nathan Low, of Deer Isle, and directed them to march immediately to Eastport, and that they would probably march the next day. I shall immediately write to Major Low, and direct him to conform to the above instructions in disposing of the companies, until the President of the United States shall otherwise direct.

I am, Sir, with respect,

Your most obedient servant,

CALEB STRONG,

Boston, August 25, 1812.

Major NATHAN LOW.

SIR,

By the time you receive this letter you will probably have arrived at the post assigned you by General Sewall. The whole of the troops ordered to march to Eastport and Robbinstown, will also probably have reached the places of their destination, and I presume

you will find them well armed and equipped. Two companies will be stationed at Eastport, and one at Robbinstown, until the President of the United States shall direct otherwise, unless in the mean time you, with the advice of Brigadier General Brewer, shall think a different disposition of them more advantageous.

The President of the United States having been duly apprized of your being ordered to Eastport, you will probably soon receive orders from him for the regulation of your future conduct, while employed on the present command. But it will be proper for you to write to the Secretary at War, and inform him of your situation, as soon after you arrive at Eastport as may be.

I would recommend to you, strict attention to the comfort, convenience and discipline of the troops under your command. As the extent of frontier committed to your care is great, the duty of the troops may be severe. But you will endeavour to adopt such modes of doing guard and other duty, as shall render it as light as possible, consistently with the safety of the troops and of the posts. And when the men are not on other duty, you will see that they are disciplined from time to time, so as to be qualified to act their part well as soldiers.

On the cleanliness of the men in their quarters and in their persons, their health will in a great measure depend. I cannot therefore too earnestly recommend to you the most vigilant attention to it.

From the instructions you may have already received from Major General Sewall and from the General Order of August 5th, you will perceive that the object of your command, as it respects the British nation, is merely defensive—this object you will strictly fulfil. At the same time you will endeavour to secure the peaceable citizens of the frontier, you are ordered to defend, against the robberies and depredations of unprincipled individuals, whatever characters they may assume.

Should any circumstances arise in the course of your command which you may deem proper for me to be ac-

quainted with, you will make your communication to me through the Adjutant General until the United States assume the control of your detachment, you will also make weekly returns of your Battalion to the Adjutant General's Office in Boston.

I am, Sir, with esteem,

Your most obedient servant,

C. STRONG.



